

**REMARKS**

Claims 1 and 61–106 are pending in the present application.

Claims 1, 61, 74–77, 89 and 94 were amended.

Reconsideration of the claims is respectfully requested.

**35 U.S.C. § 112, Second Paragraph (Definiteness)**

Claims 69, 75–77, 89 and 94–102 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. This rejection is respectfully traversed.

The errors identified in the Office Action have been corrected.

Therefore, the rejection of claims 69, 75–77, 89 and 94–102 under 35 U.S.C. § 112, second paragraph has been overcome.

**35 U.S.C. § 102 (Anticipation)**

Claims 1, 61–69, 70, 74–88, 90, 94–101 and 103 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,354,331 to *Schachar*. This rejection is respectfully traversed.

A claim is anticipated only if each and every element is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. MPEP § 2131 at p. 2100-67 (8<sup>th</sup> ed. rev. 5 August 2006).

Independent claim 1 recites that the elongated body is adapted to be implanted in a pocket formed within the scleral tissue in the zone exterior to the ciliary body, the pocket having a length

less than a circumference of the globe of the eye in that zone. Such a feature is not found in the cited reference. The scleral band in *Schachar* extends around the entire circumference of the globe of the eye.

Independent claim 61 recites that the first end of the body is more distal from the second end than from any other portion of the body. Similarly independent claim 74 recites that every portion of the body is spaced apart from the first end by a distance less than a distance between the first and second ends. Such a feature is not found in the cited reference.

Independent claims 80 and 84 each recite a ridge exerting a force expanding the sclera in the region of the ciliary body. Such a feature is not found in the cited reference. The screw or threads cited in the Office Action do not form a ridge. The Office Action cites no evidence supporting an interpretation of the term “ridge” that would encompass a screw or threads.

Therefore, the rejection of claims 1, 61–69, 70, 74–88, 90, 94–101 and 103 under 35 U.S.C. § 102 has been overcome.

**35 U.S.C. § 103 (Obviousness)**

Claims 69, 89 and 102 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Schachar*. This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-125 (8th ed. rev. 5 August

2006). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.*

To establish a *prima facie* case of obviousness, three basic criteria must be met: First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

As noted above, the independent claims from which the rejected claims depend each recite features not found in the cited reference.

Therefore, the rejection of claims 69, 89 and 102 under 35 U.S.C. § 103 has been overcome.

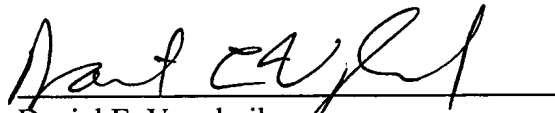
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *dvenglarik@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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